

HOUSE No. 1439

By Mr. Casey of Winchester, petition of Paul C. Casey relative to identity fraud. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE CRIME OF IDENTITY FRAUD.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 266 of the General Laws is hereby amended by striking
2 out Section 37E and inserting in its place:

3 (a) For purposes of this section, the following words shall have
4 the following meanings:—

5 “Harass”, willfully and maliciously engage in an act directed at
6 a specific person or persons, or at a specific organization or orga-
7 nizations, which act seriously alarms or annoys such person or
8 persons or any person or persons employed by or associated with
9 such organization or organizations, and would cause a reasonable
10 person to suffer substantial emotional distress.

11 “Identifying information”, any name or number that may be
12 used, alone or in conjunction with any other information, to
13 assume the identity of an individual or organization including any
14 name, address, telephone number, driver’s license number, social
15 security number, place of employment, employee identification
16 number, tax identification number, mother’s maiden name,
17 demand deposit account number, savings account number, credit
18 card number, computer password identification or other identi-
19 fying information.

20 “Organization,” any corporation, partnership, joint venture,
21 firm, sole proprietorship, association of individuals, or any other
22 professional or business entity.

23 “Person with a disability,” a person who is mentally retarded, as
24 defined by section one of chapter one hundred and twenty-three B
25 or who is otherwise mentally or physically disabled and as a result
26 of such mental or physical disability is wholly or partially depen-
27 dent on another person or persons to meet his daily living needs.

28 “Pose”, to falsely represent oneself, directly or indirectly, as
29 another person, persons, or organization.

30 “Victim”, any person who, or organization that has suffered
31 financial loss or any entity that provided money, credit, goods,
32 services or anything of value and has suffered financial loss as a
33 direct result of the commission or attempted commission of a vio-
34 lation of this section.

35 (b) Whoever, with fraudulent intent, knowingly and intention-
36 ally poses as another person, living or dead, as a representative of
37 an organization, or as being authorized to act on behalf of an orga-
38 nization, and uses such person’s or organization’s identifying
39 information to obtain or to attempt to obtain money, credit, goods,
40 services, anything of value, any identification card or other evi-
41 dence of such person’s or organization’s identity, to harass another
42 person or organization, to commit an illegal act, or to avoid identi-
43 fication, apprehension or prosecution for a crime shall be guilty of
44 the crime of identity fraud and shall be punished for an initial
45 offense by a fine of not more than \$5,000 or imprisonment in a
46 house of correction for not more than two and one-half years, or
47 by both such fine and imprisonment and for a second and subse-
48 quent offense by a fine of not more than \$25,000 or imprisonment
49 in the state prison for not more than five years or a house of cor-
50 rection for not more than two and one half years, or both such fine
51 and imprisonment.

52 (c) Whoever, with fraudulent intent, knowingly and intention-
53 ally obtains identifying information about another person, living
54 or dead, or an organization, with the intent to pose as such person,
55 or as a representative of such organization, or as being authorized
56 to act on behalf of an organization in order to obtain money,
57 credit, goods, services, anything of value, any identification card
58 or other evidence of such person’s or organization’s identity, to
59 harass another person or organization, or to avoid identification,
60 apprehension or prosecution for a crime shall be guilty of the
61 crime of identity fraud and shall be punished for an initial offense

62 by a fine of not more than \$5,000 or imprisonment in a house of
63 correction for not more than two and one-half years, or by both
64 such fine and imprisonment and for a second and subsequent
65 offense by a fine of not more than \$25,000 or imprisonment in the
66 state prison for not more than five years or a house of correction
67 for not more than two and one half years, or both such fine and
68 imprisonment.

69 (d) Whoever commits an offense described in this section by
70 using the identifying information of a person sixty-five years or
71 older or a person with a disability shall be punished by a fine of
72 not more than \$10,000 or imprisonment in the state prison for not
73 more than five years, or in jail for not more than two and one half
74 years, or both and for a second and subsequent offense by a fine
75 of not more than \$25,000 or imprisonment in the state prison for
76 not more than ten years or a house of correction for not more than
77 two and one half years, or both such fine and imprisonment.

78 (e) Whoever knowingly and intentionally manufactures, sells,
79 purchases, transfers, gives, trades, loans, delivers, or possesses,
80 five or more items containing the identifying information of the
81 same person or organization, or the identifying information of five
82 or more separate persons or organizations with the intent to
83 commit an offense described in this section or to assist another to
84 commit an offense described in this section shall be guilty of the
85 crime of trafficking in stolen identities and shall be punished by a
86 fine of not more than \$25,000 or imprisonment in the state prison
87 for not more than five years, or in jail for not more than two and
88 one half years, or both and for a second and subsequent offense by
89 a fine of not more than \$50,000 or imprisonment in the state prison
90 for not more than ten years or a house of correction for not more
91 than two and one half years, or both such fine and imprisonment.

92 (f) The knowledge or intent of the person alleged to have com-
93 mitted any of the crimes within this section may be proved by direct
94 or circumstantial evidence and the testimony of the individual or a
95 representative on behalf of the organization whose identifying infor-
96 mation or item containing identifying information was obtained or
97 used to commit any of the crimes within this section shall not be
98 required to find a person guilty of those crimes.

99 (g) An offense under this section may be prosecuted in any
100 county in which an element of the offense was committed or in the

101 county of residence of the person or organization whose identi-
102 fying information was allegedly used in the commission of the
103 crimes of identity fraud or of trafficking in stolen identities as
104 defined in this section.

105 (h) A person found guilty of violating any provisions of this
106 section shall, in addition to any other punishment, be ordered to
107 make restitution for financial loss sustained by a victim as a result
108 of such violation. Financial loss may include any costs incurred
109 by such victim in correcting the credit history of such victim or
110 any costs incurred in connection with any civil or administrative
111 proceeding to satisfy any debt or other obligation of such victim,
112 including lost wages and attorney's fees.

113 (i) A law enforcement officer may arrest without warrant any
114 person he has probable cause to believe has committed the offense
115 of identity fraud or trafficking in stolen identities as defined in
116 this section.